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Suhaimi bin Hashim v Public Prosecutor

B HIGH COURT (IPOH) — CRIMINAL APPEAL NOS AA-42H-20–09 OF 2020, AA-42H-21–09 OF 2020, AA-42H-22–09 OF 2020, AA-42H-23–09 OF 2020 AND AA-42H-24–09 OF 2020
SU TIANG JOO JC
23 SEPTEMBER 2021

C

Criminal Procedure — Sentencing — Appeal against sentence — Sentenced to eight years imprisonment for each conviction to be served consecutively — Whether sentence imposed had crushing effect on appellant — Whether sentence would offend 'totality principle' — Whether sentence was manifestly excessive — Whether trial judge considered guilty plea — Whether there was miscarriage of justice — Penal Code ss 392 & 395

D

E At the sessions court, the appellant pleaded guilty and was convicted of two counts of armed robbery and three counts of armed gang-robbery and was sentenced to eight years imprisonment and three strokes of whipping for each conviction with each sentence of imprisonment to be served consecutively, totalling 40 years of imprisonment. The appellant did not appeal against the five sentences of imprisonment having to be served consecutively nor the 15 strokes of whipping. However, the appellant appealed against the sentences of imprisonment imposed contending that, the appellant being 32 years old, would be 72 years of age by the time he was to be released. This, the appellant submitted: (a) had a 'crushing effect' on him; and (b) that 40 years imprisonment would offend the 'totality principle', it being 100% more than the maximum allowable sentence of 20 years for the more serious offence of armed gang-robbery. In five separate appeals, the appellant sought for the sentences of imprisonment to be reduced to four years for each offence bringing it down to a cumulative total of 20 years.

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H **Held**, dismissing the appeals:

(1) The session court judge ('SCJ') had taken into account the plea of guilt of the appellant and had clearly proceeded on the public interest exception. In any event, whilst being entitled to a discount for pleading guilty, for offences under s 395 of the Penal Code, the maximum term of imprisonment was 20 years and under s 392 read with s 397 of the Penal Code for carrying out armed robbery it was 14 years. By handing down a sentence of eight years, the net effect of the SCJ's order was such that his honour had given a discount for each of the offences the appellant was convicted of upon his plea of guilt. The court accepted that the sentence

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of a eight year term of imprisonment plus three strokes of whipping for each of the offences the appellant was sentenced were not manifestly excessive. Therefore, the court was of the view that the complaint that the SCJ had not made a distinction between these two offences to be without merit and in any event, even if there had been no such distinction made, there had been no miscarriage of justice (see paras 30 & 33–34).

(2) A plain reading of r 43 of the Prison Rules 2000 made it clear that the one-third remission rule had to be earned. The entitlement to a remission was only after the prisoner had commenced serving his sentence of imprisonment. It followed that at the time of sentencing, the prospective remission should not be taken into account (see para 37).

(3) It was clear that the appellant had carefully planned the timing and targets of his criminal acts and had caused fear and trauma to all his victims as well as members of the public. Therefore, given the serious offences serially committed by the appellant, the SCJ was correct on the facts and in the law and his judgments for the five cases and therefore, appellate intervention was not warranted (see paras 43–44).

[Bahasa Malaysia summary

Di mahkamah sesyen, perayu mengaku bersalah dan telah disabitkan atas dua pertuduhan rompakan bersenjata dan tiga pertuduhan rompakan berkumpulan bersenjata dan telah dijatuhi hukuman penjara lapan tahun dan tiga sebatan bagi setiap sabitan dengan setiap hukuman penjara akan dijalankan secara berturut-turut, bersamaan dengan 40 tahun penjara. Perayu tidak merayu terhadap lima hukuman penjara yang perlu dijalani secara berturut-turut mahupun 15 sebatan. Bagaimanapun, perayu merayu terhadap hukuman penjara yang dikenakan dengan alasan, perayu berumur 32 tahun, akan berumur 72 tahun pada masa beliau dibebaskan. Dengan ini, perayu menghujahkan: (a) mempunyai 'crushing effect' kepada beliau; dan (b) bahawa 40 tahun penjara akan menyalahi 'prinsip totaliti', ia adalah 100% lebih daripada hukuman maksimum yang dibenarkan selama 20 tahun bagi kesalahan yang lebih serius iaitu rompakan berkumpulan bersenjata. Dalam lima rayuan berasingan, perayu memohon hukuman penjara dikurangkan kepada empat tahun bagi setiap kesalahan yang menurunkannya kepada jumlah terkumpul 20 tahun.

Diputuskan, menolak rayuan:

(1) Hakim mahkamah sesyen ('HMS') telah mengambil kira pengakuan bersalah perayu dan dengan jelas telah meneruskan pengecualian kepentingan awam. Walau apapun, walaupun berhak mendapat diskaun kerana mengaku bersalah, bagi kesalahan di bawah s 395 Kanun Keseksaan, tempoh maksimum penjara adalah 20 tahun dan di bawah s 392 dibaca bersama s 397 Kanun Keseksaan rompakan bersenjata

adalah 14 tahun. Dengan menjatuhkan hukuman lapan tahun, kesan bersih perintah HMS adalah kerana Yang Arif telah memberikan diskaun bagi setiap kesalahan yang disabitkan oleh perayu atas pengakuan bersalahnya. Mahkamah telah menerima hukuman penjara lapan tahun ditambah tiga sebatan bagi setiap kesalahan yang dijatuhkan oleh perayu adalah tidak keterlaluan. Oleh itu, mahkamah berpendapat bahawa aduan bahawa HMS tidak membuat perbandingan antara kedua-dua kesalahan ini adalah tanpa merit dan dalam apa jua keadaan, sekiranya tiada perbandingan sedemikian dibuat, tidak berlaku sebarang ketidakkeadilan (lihat perenggan 30 & 33–34).

(2) Bacaan umum k 43 Peraturan Penjara 2000 menjelaskan bahawa peraturan remitan satu pertiga perlu diperolehi. Kelayakan untuk mendapat remitan hanya selepas banduan tersebut mula menjalani hukuman penjara. Ia lanjutan bahawa pada masa hukuman, remitan prospektif tidak harus diambil kira (lihat perenggan 37).

(3) Adalah jelas bahawa perayu telah merancang dengan teliti masa dan sasaran kelakuan jenayahnya dan telah menyebabkan ketakutan dan trauma kepada semua mangsanya serta orang awam. Oleh itu, memandangkan kesalahan serius yang dilakukan secara bersiri oleh perayu, HMS adalah telah dengan tepat pada fakta dan undang-undang serta penghakimannya bagi lima kes tersebut dan oleh itu, campur tangan rayuan tidak wajar (lihat perenggan 43–44).]

Cases referred to

Bachik bin Abdul Rahman v PP [2004] 2 MLJ 534; [2004] 2 CLJ 572, CA (refd)
Fu Foo Tong & Ors v PP [1995] 1 SLR 448, CA (refd)
James Jeffery & Ors v PP and another case [2021] MLJU 1380, HC (refd)
Kassim bin Utus v PP [2005] 6 MLJ 320, HC (refd)
Maideen Pillai v PP [1996] 1 SLR 161, HC (refd)
Mohamed Abdullah Ang Swee Kang v PP [1988] 1 MLJ 167; [1987] CLJ Rep 209, SC (refd)
Mohd Akhtar Hussain Alias v Assistant Collector Of Customs [1988] 1 MLJ (Crl) 146; 1988 SC 2143, SC (refd)
Muhamad Taufik bin Kamaluddin lwn Pendakwa Raya [2007] 4 MLJ 288; [2007] 8 CLJ 195, HC (refd)
Muhammad Safriadi lwn Pendakwa Raya [2011] MLJU 1405; [2011] 1 LNS 686, HC (refd)
Pendakwa Raya lwn Mohamad bin Tawakal [2013] 1 MLJ 759; [2012] 7 CLJ 372, CA (refd)
Pendakwa Raya lwn Nahendren a/l Krishnasamy [1995] MLJU 528, HC (refd)
Pendakwa Raya v Prabu a/l Veeramuthu and others [2010] MLJU 663; [2010] 8 CLJ 257, CA (refd)

PP v Ahmad Khairul Fa' ais bin Mat Dahlan & Ors [2006] 5 MLJ 190, HC (refd)
PP v Alam Shah Hj Mohamad [2014] 1 LNS 360 (refd)
PP v Cheong Kerh Chi & Anor [2011] MLJU 501; [2011] 1 LNS 560, CA (refd)
PP v Choy Kok Kuan [1958] 3 MC 205 (refd)
PP v Loo Choon Fatt [1976] 2 MLJ 256; [1976] 1 LNS 102 (refd)
PP v Mustafa Abu Bakar [2009] MLJU 1299; [2009] 1 LNS 1237, HC (refd)
PP v Ravindran & Ors [1993] 1 MLJ 45; [1992] 1 LNS 47, HC (refd)
PP v Razis bin Awang [2020] MLJU 132, HC (refd)
PP v Wong Chak Heng [1985] 1 MLJ 457 (refd)
Rosyatimah bte Neza v Pengarah Penjara, Pulau Pinang [1990] 2 MLJ 17, HC (refd)
Salleh bin Hj Ali Hassan v PP [1987] 1 MLJ 522 (refd)
Sau Soo Kim v PP [1975] 2 MLJ 134; [1975] 1 LNS 158, FC (refd)
Tuan Mat bin Tuan Lonik v PP [2009] 4 MLJ 81; [2009] 4 CLJ 638, CA (refd)
Wong Keng Liang v PP [2013] 4 MLJ 263, CA (refd)
Yusuf bin Busrah v PP [2006] MLJU 163, HC (refd)

Legislation referred to

Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007
Criminal Procedure Code ss 18, 292(1)
Criminal Procedure Code [SG] s 18
Penal Code ss 37(1)(f), 390, 392, 395, 397
Prison Act 1995 s 44(1)
Prison Rules 2000 rr 43, 43(1)(a), (1)(b)

Varpal Singh s/o Menender Singh (Varpal & Assoc) for the appellant.
Sally Chay Mei Ling (Deputy Public Prosecutor, Perak Legal Advisor Offices) for the respondent.

Su Tiang Joo JC:

INTRODUCTION

[1] At the sessions court on 21 August 2020, the appellant pleaded guilty and was convicted of two counts of armed robbery and three counts of armed gang robbery and was sentenced to eight years imprisonment and three strokes of whipping for each conviction with each sentence of imprisonment to be served consecutively. Five counts x eight years = 40 years.

[2] He did not pursue his appeal against the five sentences of imprisonment having to be served consecutively. Neither did he complain about the 15 strokes of whipping he has to undergo.

[3] The appellant being 32 years old would be 72 years of age by the time he is to be released. This, he submits will have a 'crushing effect' on him and that 40 years imprisonment would offend the 'totality principle', it being 100% more than the maximum allowable sentence of twenty years for the more serious offence of armed gang robbery.

[4] In his five separate appeals he sought for the sentences of imprisonment to be reduced to four years for each offence bringing it down to a cumulative total of 20 years.

[5] This court on the 17 August 2021 dismissed his five appeals which were heard together. Dissatisfied, the appellant appeals to the Court of Appeal. This judgment is written for the five appeals.

THE OFFENCES

[6] The five offences against the appellant were:

(a) AA-42H-20–09 of 2020 — armed gang robbery:

> Pertuduhan:
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> Bahawa kamu bersama seorang lagi yang masih bebas, pada 02/01/2020 jam lebih kurang 02.37 pagi di dalam kedai 24 Jam 7 Eleven no. 1774, Laluan Tawas Damai, Anjung Tawas Damai, 30010, Ipoh, Perak, di dalam daerah Kinta di dalam Negeri Perak, telah melakukan rompak berkumpulan ke atas wang tunai berjumlah RM100.00 dan (2) kotak rokok milik kepada penama Hafiz Harahap bin Fuad, KPT: 010804-08-1037. Oleh yang demikian, kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 395 Kanun Keseksaan dan dibaca bersama seksyen 34 Kanun yang sama.
>
> Hukuman: penjara hingga selama boleh sampai 20 tahun dan boleh juga dikenakan sebat.

(b) AA-42H-21–09 of 2020 — armed robbery:

> Pertuduhan:
>
> Bahawa kamu pada 09 January 2020 jam lebih kurang 4.00 pagi bertempat di kedai Serbaneka 7 Eleven Alamat No. 35 Jalan Sri Ampang 1, Taman Ipoh Jaya, 31350 Ipoh, di dalam Daerah Kinta, di dalam Negeri Perak telah merompak 22 kotak rokok jenis Dunhill Classic, 10 paket coklat Eclipse Chewy Mint Papermint bernilai RM39 dan wang tunai RM89.90 milik kedai Serbaneka 7 Eleven Alamat No 35, Jalan Sri Ampang 1, Taman Ipoh Jaya, 31350 Ipoh Perak dan semasa melakukan rompak kamu telah menggunakan senjata pisau dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 392 Kanun Keseksaan dibaca bersama seksyen 397 Kanun yang sama.

Hukuman: Hendaklah diseksa dengan penjara selama tempoh empat belas tahun dan juga dikenakan denda atau sebat.

(c) AA-42H-22-09 of 2020 — armed robbery:

Pertuduhan:

Bahawa kamu pada 04/01/2020 jam lebih kurang 0330 hrs di 7 Eleven Halaman Meru Impian. Bandar Meru Raya Daerah Kinta Di Dalam Negeri Perak telah merompak wang tunai sebanyak RM30 milik Ammar Hijjaz Fitri Abdul Aziz, Nombor Kad Pengenalan 010101-08-0353 dan semasa melakukan rompak itu kamu telah bersenjatakan senjata maut iaitu pisau. Oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 392 Kanun Keseksaan dan dibaca bersama Seksyen 397 Kanun yang sama.

Hukuman: Hendaklah diseksa dengan Penjara selama tempoh empat belas tahun dan juga dikenakan denda atau sebat.

(d) AA-42H-23–09 of 2020 — armed gang robbery:

Pertuduhan:

Bahawa kamu bersama seorang lagi yang masih bebas, pada 13/01/2020 jam lebih kurang 05.30 pagi di dalam kedai 24 jam My Station Meru Permai, 30020 Ipoh, Perak, di dalam daerah Kinta di dalam Negeri Perak telah melakukan rompak berkumpulan ke atas wang tunai berjumlah RM165.00 dan(10) Kotak Rokok Jenama Dunhill milik kepada Penama Ku Amir bin Ku Abdullah, KPT: 720823-08-6593. Oleh yang demikian, kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 395 Kanun Keseksaan dan dibaca bersama seksyen 34 Kanun yang sama.

Hukuman: penjara hingga selama boleh sampai 20 tahun dan boleh juga dikenakan sebat.

(e) AA-42H-24–09 of 2020 — armed gang robbery:

Pertuduhan:

Bahawa kamu bersama-sama seorang lagi yang masih bebas pada 07/01/2020 jam lebih kurang 03:00 pagi di kedai 7-Eleven, 1229, Jalan Jelapang, Taman Jati Dalam Daerah Kinta dalam Negeri Perak telah melakukan rompak terhadap Muhammad Alif Ridzuan bin Mohd Mustapha, No KP 011204-40-1347, di mana kamu telah merompak harta milik kedai 7-Eleven tersebut iaitu wang tunai RM55/- dan tujuh buah kotak rokok Dunhill Classic, oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 395 Kanun Keseksaan dan dibaca dengan seksyen 34 Kanun yang sama.

Hukuman:

Jika sabit kesalahan, hendaklah diseksa dengan penjara yang boleh sampai dua puluh tahun dan bolehlah juga dikenakan sebatan.

A ARMED ROBBERY AND ARMED GANG ROBBERY

[7] The Penal Code ('the PC') distinguishes between robbery and gang robbery and a heavier sentence is to be imposed if the offence was carried out when armed. Indeed, as can be seen in the provisions reproduced below, it is mandatory to impose whipping when a robbery is committed when armed.

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[8] Section 390 of the PC on robbery provides as follows:

390 Robbery

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(1) In all robbery there is either theft or extortion.

(2) Theft is 'robbery', if, in order to commit theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death, or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

D

(3) Extortion is 'robbery', if the offender, at the time of committing the extortion, is in the presence of the person put in fear and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

E

Explanation — The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

F

ILLUSTRATIONS

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to commit that theft, has voluntarily caused wrongful restraint to Z . A has therefore committed robbery.

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(b) A meets Z on the high road, shows a pistol, and demands Z's purse. Z in consequence surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence, A has therefore committed robbery.

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(c) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z , in consequence, delivers his purse. Here A has extorted the purse from Z , by causing Z to be in fear of instant hurt to the child, who is there present. A has therefore committed robbery on Z .

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(d) A obtains property from Z by saying - 'Your child is in the hands of my gang, and will be put to death unless you send us one thousand ringgit'. This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

(e) Z is walking along a road. A on a motorcycle snatches Z's handbag and in the process causes hurt to Z. A rides away with Z's handbag. A has therefore committed robbery.

[9] Section 392 of the PC on punishment for robbery provides as follows:

392 Punishment for robbery.

Whoever commits robbery shall be punished with imprisonment for a term which may extend to fourteen years, and he shall also be liable to fine or to whipping.

[10] Section 395 of the PC on punishment for gang robbery provides as follows:

395 Punishment for gang-robbery.

Whoever commits gang-robbery shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to whipping.

[11] Section 397 of the PC on robbery when armed or with attempt to cause death or grievous hurt provides as follows:

397 Robbery when armed or with attempt to cause death or grievous hurt.

If at the time of committing or attempting to commit robbery, the offender is armed with or uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, such offender shall be liable to be whipped, in addition to any other punishment to which he may be liable under any other section of this code.

SUMMARY OF OFFENCES

[12] For ease of perusal, a summary of the offences the appellant was charged with, convicted and sentenced is tabulated in the Schedule below.

Schedule

HIGH COURT IPOH (SESSIONS COURT IPOH)	AA-42H-20-09/ 2020 (AA-62RS-13-02/2020)	AA-42H-21-09/ 2020 (AA-62RS-12-02/2020)	AA-42H-22-09/ 2020 (AA-62RS-15-02/2020)	AA-42H-23-09/ 2020 (AA-62RS-14-02/2020)	AA-42H-24-09/ 2020 (AA-62RS-11-02/2020)
OFFENCES UNDER THE PENAL CODE	Section 395	Sections 392 & 397	Sections 392 & 397	Section 395	Section 395
PROVISIONS UNDER THE PENAL CODE	Imprisonment of up to 20 years and liable to whipping	**S 392 PC**- Imprisonment of up to 14 years and also liable to fine or whipping **S 397 PC** - Shall be liable to be whipped in addition to any other punishment to which he may be liable under any other section of the PC	**S 392 PC**- Penjara sampai 14 tahun dan bolehlah juga dikenakan denda atau sebat **S 397 PC**- Shall be liable to be whipped in addition to any other punishment to which he may be liable under any other section of the PC	Imprisonment of up to 20 years and liable to whipping	Imprisonment of up to 20 years and liable to whipping

Sentence	Imprisonment 8 years at the expiration of the imprisonment for Case (**AA-62RS-12-02/2020**) & 3 strokes of whipping	Imprisonment 8 years at the expiration of the imprisonment for Case (**AA-62RS-11-02/2020**) & 3 3 strokes of whipping	Imprisonment 8 years at the expiration of the imprisonment for Case (**AA-62RS-14-02/2020**) & 3 strokes of whipping	Imprisonment 8 years at the expiration of the imprisonment for Case (**AA-62RS-13-02/2020**) & 3 strokes of whipping	Imprisonment 8 years at the expiration of the imprisonment for Case (**AA-62RS-10-02/2020**) & 3 strokes of whipping
Date & time of offence	2.1.2020, at about 2.37 AM	9.1.2020, at about 4.00 AM	4.1.2020, at about 3.30 AM	13.1.2020, at about 5.30 AM	7.1.2020, at about 3.00 AM
Place offence committed	Outlet of 7-Eleven, No. 1774, Laluan Tawas Damai, Anjung Tawas Damai, Kinta, Perak.	Outlet of 7-Eleven, No. 35, Jalan Sri Ampang 1 Taman Ipoh Jaya, Ipoh, Kinta, Perak.	Outlet of 7-Eleven, Halaman Meru Impian, Bandar Meru Raya, Kinta, Perak.	24 Hours outlet at My Station Meru Permai, Ipoh, Kinta, Perak.	Outlet of 7-Eleven, 1229, Jalan Jelapang, Taman Jati, Kinta, Perak.
Loss	Cash (RM100) & 2 packets of cigarettes	Cash (RM 89.90), 22 packets of cigarettes & 10 packets of chocolates	Cash (RM 30)	Cash (RM165) & 10 packets of cigarettes	Cash (RM55) & 7 packets of cigarettes
Number of suspects	2	1	1	2	2

COMMENCEMENT OF IMPRISONMENT

[13] The appellant had sought for the first term of imprisonment to commence from the date of his arrest.

[14] However, as the appellant was already serving a term of imprisonment of eight years for yet another offence which is not the subject matter of these appeals, in the course of the appeals before this court, learned counsel conceded

that pursuant to the provisions of sub-s 292(1) of the Criminal Procedure Code ('the CPC') the learned sessions court judge ('LSJ') had acted well within his honour's discretion to order that the sentences for imprisonment were to commence at the expiration of the imprisonment to which the appellant was previously sentenced. Subsection 292(1) of the CPC is reproduced hereunder:

> (1) *When a person* who is an escaped convict or *is undergoing a sentence of imprisonment is sentenced to imprisonment, such imprisonment shall commence either immediately or at the expiration of the imprisonment to which he has been previously sentenced, as the Court awarding the sentence may direct*.

[15] In his written submissions, learned counsel for the appellant conceded that by virtue of the provisions of sub-s 292(1) of the CPC the LSJ had rightly ordered that the appellant's first sentence of eight years imprisonment for sessions court Case No AA-62RS-11–02 of 2020 corresponding to High Court Ipoh Appeal No AA-42-24–09 of 2020 is to commence at the expiration of the sentence the appellant was undergoing for sessions court Case No AA-62-RS-10–02 of 2020 (encl 23 in AA-42H-20–09 of 2020 para B ii and iii).

TOTALITY AND CRUSHING EFFECT/MITIGATING FACTORS

[16] However, learned counsel for the appellant submitted that when sentences are ordered to be served consecutively, the totality of the sentences which the appellant has to undergo has to be taken into consideration in determining their adequacy or severity. Reliance was placed on the authorities of *Fu Foo Tong & Ors v Public Prosecutor* [1995] 1 SLR 448; *Maideen Pillai v Public Prosecutor* [1996] 1 SLR 161 (HC) and *Mohd Akhtar Hussain Alias v Assistant Collector Of Customs* [1988] 1 MLJ (Crl) 146; 1988 SC 2143 (SC).

[17] Learned counsel lay emphasis on the following extract of the Singapore Court of Appeal decision in *Fu Foo Tong* where Karthigesu JA in delivering the grounds of judgment of the court made reference to a decision by Yong Pung How CJ and quoting therefrom said:

> It seems to us that the learned judge took a broad approach as, in the exercise of his discretion, he chose to make the sentences on four of the charges to run consecutively. In doing so he must have considered that 32 years and 24 years respectively were not too high. Yong Pung How CJ addressing the 'broad approach' in *Kanagasuntharam v Public Prosecutor* [1992] 1 SLR 81 continued:
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> > Useful as the broad approach may be, we were of the opinion that it should, in appropriate circumstances, be further analyzed. In this respect, we support the view of DA Thomas in (2nd Ed) that the principle has two limbs. The learned author stated (at pp 57–58):
> >
> > The many decisions of the court in which the totality principle has been applied to explain the reduction of a cumulative sentence made up of correctly calculated

> individual parts suggest that the principle has two limbs. *A cumulative sentence may offend the totality principle if the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences involved, or if its effect is to impose on the offender 'a crushing sentence' not in keeping with his records and prospects.*

[18] However, Karthigesu JA went on to hold that the totality principle needs to be qualified in its application in Singapore and gave the following hypothetical example:

> a public servant is convicted at one trial of four distinct charges of criminal breach of trust and is sentenced to six years imprisonment on each charge. Section 18 requires the sentencing court to make at least two of the four terms run consecutively. This means that the offender will serve at least 12 years yet the statutory limit of 10 years imposed by s 409 of the Code means that the first limb of the totality principle is breached. To give full effect to the totality principle in such circumstances would be to frustrate the purpose of s 18 and, accordingly, the first limb of the principle has to be qualified. We note that the English courts have also departed from the full effect of the first limb of the principle in appropriate cases even though they are not bound by any equivalent of s 18 of our CPC: see (op cit, at p 59, and the cases cited at fn 1).

[19] Section 18 of the Singapore Criminal Procedure Code which this court extracted from the decision of Yong Pung How CJ in the case of *Maideen Pillai* provides that:

> Where at one trial a person is convicted and sentenced to imprisonment for at least three distinct offences, the court before which he is convicted shall order that the sentences for at least two of those offences shall run consecutively.

[20] In Malaysia, we do not have a provision in our of the CPC equivalent to that found in s 18 of the CPC of Singapore and it would therefore at first blush suggest that the totality principle comprising both limbs ought to be applied with full force to the facts that obtain in this case so that the aggregate sentence is not substantially above the normal level of sentences for the most serious of the individual offences involved. The most serious offence in this case is that under s 395 of the PC which carry a maximum term of imprisonment of twenty years. With the appellant having been sentenced to an aggregate of 40 years for the five offences ie 100% more than the maximum sentence of the most serious offence, learned counsel, therefore, submitted that the LSJ had erred in fact and law in failing to give any serious consideration at all to the totality principle.

[21] Learned counsel proceeded to pray for the cumulative sentence to be set aside and prayed that instead of eight years, four years be imposed for each

offence (encl 23 in AA-42H-20–09 of 2020 para B xiv) so as to bring the aggregate sentence down to 20 years bearing in mind the following factors:

(a) the LSJ made no distinction of the fact that the appellant was also charged for two offences under s 392 read together with s 397 of the Penal Code which was subject to a lesser maximum custodial sentence of 14 years;

(b) the appellant was a first offender and therefore with no criminal antecedents; and

(c) the appellant had pleaded guilty, citing *Public Prosecutor v Ravindran & Ors* [1993] 1 MLJ 45; [1992] 1 LNS 47 which in turn cited the Supreme Court case of *Mohamed Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167; [1987] CLJ Rep 209 for the principle that a plea of guilty would entitle the accused person to a discount of between one quarter to one third of the sentence. The appellant also submitted by pleading guilty at the first instance the appellant had saved the court's and prosecution time and expenses and referred to the case of *Sau Soo Kim v Public Prosecutor* [1975] 2 MLJ 134; [1975] 1 LNS 158 where Suffian LP speaking for the Federal Court said:

> Whether a person is a hardened criminal or not, I feel that a plea of guilt should be treated as a mitigating factor, it not only saves the country a great expense of a lengthy trial but also saves time and inconvenience of many, particularly witnesses.

(d) that the LSJ had given too much weight to public interest.Learned counsel pointed out that in *Public Prosecutor v Loo Choon Fatt* [1976] 2 MLJ 256; [1976] 1 LNS 102, Hashim Yeop Sani J said that: The correct approach is to strike a balance as far as possible, between the interests of the public and the interests of the accused. And, in *Tuan Mat bin Tuan Lonik v Public Prosecutor* [2009] 4 MLJ 81; [2009] 4 CLJ 638 Suriyadi Halim Omar JCA (as His Lordship then was) had in dealing with a case of where the accused pleaded guilty to five offences of incestuous rape of his stepdaughter said:

> Not only should public interest be taken into account of, the sentence imposed too must be fair and sensible... To impose a sentence that will take him until the age of 123 years and knowing full well that he never will serve the full term not only is bizarre but strains the intelligence of the court. Any illogical sentence may attract unnecessary scrutiny and negative comments from the public on how we awkwardly conduct ourselves.

[22] In resisting the appeal, Mdm Sally Chay, the learned deputy public prosecutor ('DPP') appearing for the prosecution strongly maintained that each of the five sentences handed down of eight years and three strokes of whipping was not manifestly excessive.

[23] To the credit of the learned DPP, she had helpfully compiled a chart to set out the sentencing trend for both offences under ss 392 and 395 of the Penal Code in the National Language and which is reproduced below:

SEKSYEN 392 KANUN KESEKSAAN

	KES	RINGKASAN FAKTA KES	HUKUMAN
1.	Muhamad Taufik Kamaluddin v Public Prosecutor [2007] 4 MLJ 288; [2007] 8 CLJ 195	Rompakan dengan senjata pisau dan 'skeru driver'. Perayu telah mengaku salah. MS: 10 tahun dan lapan kali sebatan rotan. Perayu merayu terhadap hukuman tersebut.	MT mengekalkan hukuman MS

SEKSYEN 395 KANUN KESEKSAAN

	KES	RINGKASAN FAKTA KES	HUKUMAN
1.	Public Prosecutor v Alam Shah Hj Mohamad [2014] 1 LNS 360	Rompakan dengan bersenjata pisau. Responden telah mengaku salah setelah diperintah bela diri. MS: 13 tahun dan dua kali sebatan rotan Pihak pendakwaan merayu terhadap hukuman tersebut.	MT: penjara 16 tahun dan lima kali sebatan rotan.
2.	Muhammad Safriadi lwn Pendakwa Raya [2011] MLJU 1405; [2011] 1 LNS 686	Rompakan dengan bersenjata parang. Mangsa tidak mengalami sebarang kecederaan. Perayu telah mengaku salah MS: 12 tahun penjara dan 12 kali sebatan rotan	MT mengekalkan hukuman MS

	KES	RINGKASAN FAKTA KES	HUKUMAN
3.	Public Prosecutor v Cheong Kerh Chi & Anor [2011] MLJU 501; [2011] 1 LNS 560	Rompakan kedai emas dengan bersenjata pistol. Melibatkan harga barang emas lebih kurang RM500,000. Kedua-dua responden telah mengaku salah setelah perbicaraan dijalankan. MT: 12 tahun penjara dan tiga kali sebatan rotan Pihak pendakwaan merayu terhadap hukuman tersebut.	MR: 18 tahun penjara dan enam kali sebatan rotan

[24] The attention of the court was drawn to the case of *Public Prosecutor v Wong Chak Heng* [1985] 1 MLJ 457 where the late Chan J (who retired as JCA) in dealing with robberies more than 25 years ago said:

> For example: robberies, offences involving serious violence, use of a weapon to wound, extortion, burglary of private dwelling houses, the stealing of car accessories from parked vehicles, motorcar theft and purse or handbag snatching in the streets or in stores. Crimes of that kind are rife at the present time and it is quite plain that where a person is charged with any of the offences which I have mentioned then the courts inevitably must take a serious view.
>
> *The public are entitled to be protected against such offenders. In the opinion of this court, they are not likely to be protected if lenient sentences are passed. Offenders are not likely to be discouraged by sentences which do not involve loss of liberty.*
>
> If an immediate prison sentence is necessary, as I believe to be the case here, then it should be consistent with the duty to protect the interests of the public and to punish and deter the criminal. To use the words of Lawton LJ in *Reg v Davies* (1978) 67 Cr App R 207, p 210.
>
> > *the courts have to make it clear that crime does not pay and the only way they can do so is by the length of sentences. Sentences show the court's disapproval, on behalf of the community, of particular types of criminal conduct.*

COURT'S ANALYSIS AND FINDINGS

[25] From the notes of proceedings of all the five cases, it was recorded after the charges were read to the appellant, the:

OKT faham sifat dan akibat pertuduhan dan mengaku salah.

[26] During the course of submissions, the appellant did not challenge the number of strokes of whipping totalling 15 he was to undergo.

SENTENCE OF IMPRISONMENT TO RUN CONSECUTIVELY

[27] Learned counsel for the appellant conceded and as can be seen from the schedule above, it is clear that all the five offences were committed on different dates, places and involving different victims. Indeed, although he had earlier sought to rely upon the same, the learned counsel for the appellant conceded that in the circumstances, the one transaction principle would not apply. And, therefore, learned counsel went on to concede that in the circumstances, the LSJ was correct to order that the sentences of imprisonment are to run consecutively and not concurrently.

[28] That the term of imprisonment of the first of the five offences is to run from an earlier term of imprisonment clearly negates the submission by the appellant that he was a first offender with no criminal antecedent.

PUBLIC INTEREST

[29] The court observed that in the Singapore Court of Appeal case of *Fu Foo Tong* relied upon heavily by the appellant, it was held that:

(1) *The protection of the public is an important exception to the general rule that an offender who pleads guilty is entitled to a discount of the sentence which would have been imposed on him had he claimed trial and been found guilty.*

[30] Indeed, as is apparent from his honour's grounds of judgment, the LSJ had taken into account the plea of guilty and was fully conscious of the accompanying principle thereto as laid down in the case of *Sau Soo Kim* relied upon and cited by learned counsel for the appellant. In dealing with this, his honour had clearly proceeded on the public interest exception as can be seen in his honour's grounds of judgment quoted below:

Dalam mempertimbangkan kepentingan awam ini dan seriusnya kesalahan ini, satu hukuman yang berbentuk pengajaran dan 'deterrence' harus diberi bagi menghalang OKT daripada mengulangi kesalahannya dan juga menghalang orang lain daripada melakukan kesalahan yang sama.

Fokus menangani dalam jenayah yang serius ini, kepentingan masyarakat awam perlu dijaga yang harus digambarkan melalui hukuman. (Rujuk kes *Pendakwa Raya lwn Khartikraj a/l Selvaraji* [2015] 11 MLJ 97, *kes ini juga melibatkan kesalahan yang sama di bawah* ss 395/397 Kanun Keseksaan.)

Hukuman yang dijatuhkan telah memberi keyakinan kepada orang awam bahawa

undang-undang wujud di negara ini untuk melindungi warganegaranya daripada kerakusan dan kebuasan penjenayah-penjenayah seperti OKT.

Mahkamah juga melihat bahawa kes OKT ini merupakan kes jenayah serius dalam takrif sek 52B Kanun Keseksaan iaitu rompakan di tempat awam dan pemilikan senjata berbahaya. OKT telah melakukan kesalahan secara konsisten iaitu bermula sepanjang bulan Januari 2020 dengan modus operandi yang sama.

[31] Augustine Paul JCA speaking for the Court of Appeal in *Bachik bin Abdul Rahman v Public Prosecutor* [2004] 2 MLJ 534; [2004] 2 CLJ 572 where the accused pleaded guilty to a charge of raping a ten year old girl and was convicted and sentenced to 18 years imprisonment with 12 strokes of whipping said:

One of the principles in sentencing is that a convicted person should be given a discount for pleading guilty. A reduction of about one third of the sentence that would otherwise have been imposed is normally given. This, however, is not a strict rule and the court may, in the exercise of its discretion, refuse to grant any discount. *The severity of the offence or the existence of a previous conviction may outweigh the mitigating effect of the guilty plea; so may the demands of public interest for a deterrent sentence as well as the absence of a good defence or of other mitigating factors. The guilty plea does not automatically entitle the convict to a lesser punishment. In the instant case, the sessions judge had considered all these factors before deciding that the accused's plea of guilty could not operate as a mitigating factor.*

[32] See also the Court of Appeal authority of *Pendakwa Raya lwn Mohamad bin Tawakal* [2013] 1 MLJ 759; [2012] 7 CLJ 372 where the accused was found guilty of violent and serious crimes it was held that:

Kepentingan awam mengatasi kepentingan peribadi OKT didalam kes sedemikian.

DISCOUNT FOR PLEA OF GUILTY

[33] In any event, whilst still on being entitled to a discount for pleading guilty, the court observed that for the offences under s 395 of the Penal Code, the maximum term of imprisonment is 20 years and under s 392 read with s 397 of the Penal Code for carrying out armed robbery it is 14 years and the LSJ by handing down a sentence of eight years, the net effect of the LSJ's order is such that his honour had given a discount for each of the offences the appellant was convicted of upon his plea of guilt.

[34] When the table of sentencing trend set out above is considered, it will be seen that the trend is one of 12 to 16 years imprisonment and five to six strokes of whipping for a s 395 of the Penal Code offence and one of seven to ten years imprisonment and two to eight strokes of whipping for a ss 392/397 of the Penal Code offence where the accused *had pleaded guilty* and by reason thereto

the court accepts that the sentence of a eight year term of imprisonment plus three strokes of whipping for each of the offences the appellant was sentenced were not manifestly excessive. Therefore, this court is of the view that the complaint that the LSJ had not made a distinction between these two offences to be without merit and in any event, even if there had been no such distinction made, there had been no miscarriage of justice.

ONE THIRD REMISSION FOR GOOD BEHAVIOUR/PRISON RULES 2000

[35] Whilst this court agree that it would be illogical to sentence an accused to a term of 123 years imprisonment as the average lifespan of a Malaysian man is 70 years of age and that of a Malaysian woman 75 years as observed by the Court of Appeal in *Tuan Mat bin Tuan Lonik v Public Prosecutor* [2009] 4 MLJ 81; [2009] 4 CLJ 638, the Court of Appeal reduced the sentence to 30 years so that:

> *... with deductions thrown in for good behaviour, by the time he is released, he will be about 70 years of age ie the average life of a Malaysian man. Even if he lives to smell freedom at that age the likelihood of him besetting and causing trauma to anyone is slim.*

[36] During the course of submissions, the learned DPP did not highlight to the court that the Court of Appeal in *Tuan Mat Tuan Lonik* had in fact taken into account deductions that could possibly be thrown in for good behaviour by a convict whilst serving his sentence of imprisonment. However, the learned DPP had tendered a copy of r 43 of the Prison Rules 2000 reproduced below to make the point that with one-third remission for good behaviour, the appellant will get 13.3 years off his cumulative sentence as to see him out by the age of 59 years of age well within the average lifespan of a Malaysian man. Rule 43 of the Prison Rules 2000 provides as follows:

> Regulation 43 Remission.
>
> (1) Subject to the terms of an order made by the Pardons Board established under Article 42 of the Federal Constitution, with a view to encouraging good conduct and industry and to facilitate reformative treatment, a prisoner sentenced to imprisonment is entitled to be granted remission as follows:
>
> (a) a convicted prisoner sentenced to a term of imprisonment exceeding one month may be granted as remission one-third of his sentence: Provided that in no case shall any remission granted result in the release of a prisoner until he has served one calender month of imprisonment;
>
> (b) *a prisoner sentenced to a term of imprisonment of one month or less than one month shall not be granted remission.*

[37] To my mind, a plain reading of r 43 makes it clear that the one third remission rule has to be earned. Only if he is of good behaviour would the

prisoner be entitled to a remission in his sentence of imprisonment. Whether he is of good behaviour is a question of fact which at the time of sentencing, could not possibly be available to the court at the time of sentencing. That the entitlement to a remission is only after the prisoner has commenced serving his sentence of imprisonment is underscored by r 43(1)(a) and (b) of the Prison Rules 2000 which provides that no remission shall be granted if it will result in the prisoner being released without him serving at least one calendar month of imprisonment. It follows that at the time of sentencing, the prospective remission should not be taken into account.

[38] This court undertook a trawl through the law reports and found that besides *Tuan Mat Lonik* in past decided cases the one third remission rule has been taken into account at various stages namely before sentencing, in the midst of the prisoner serving his sentence of imprisonment and in one case even after the prisoner had been released. A summary of the application of the one third remission rule for the cases I have managed to find are set out below:

(a) *Public Prosecutor v Choy Kok Kuan* [1958] 3 MC 205 Rigby J — this case is not helpful because by the time the applicant's application for a writ of habeas corpus against a banishment order he had already enjoyed the one third remission under the then r 43 of the Prison Rules 2000;

(b) *Rosyatimah bte Neza v Pengarah Penjara, Pulau Pinang* [1990] 2 MLJ 17 Abdul Malek J — at the time of hearing of the application for a writ of habeas corpus, the sentence of imprisonment had been substantially served and the High Court took into account the one third remission to compute as to when the accused convicted of possession of dangerous drugs ought to have been released and a writ of habeas corpus was granted to have him released;

(c) *Pendakwa Raya lwn Nahendren a/l Krishnasamy* [1995] MLJU 528 Mohd Ghazali H (later FCJ) — the accused was sentenced to 18 years imprisonment for an offence of culpable homicide not amounting to murder after the High Court took into account the one third remission rule at the time of sentencing;

(d) *Kassim bin Utus v Public Prosecutor* [2005] 6 MLJ 320 David Wong JC (later CJSS) — in the midst of serving sentences of imprisonment, six separate appeals were lodged by the appellant against six separate sentences handed down by the magistrate's court. Added to the two handed down by the sessions court, the appellant had been sentenced to 39 years. On appeal, the High Court held that 39 years is appropriate after taking into account the one third remission which will see the appellant out at the age of 56 years of age;

(e) *Public Prosecutor v Ahmad Khairul Fa' ais bin Mat Dahlan & Ors* [2006] 5 MLJ 190 VT Singham J — in a road rage incident, the accused hit the

victim with a brick causing death and was sentenced to 14 years imprisonment after taking into account what was described as the usual one third remission for good conduct at the time of sentencing;

(f) *Yusuf bin Busrah v Public Prosecutor* [2006] MLJU 163 David Wong Dak Wah JC — in dismissing the appeal against the sentence of 27 years imprisonment the court took into account the one third remission rule;

(g) *Public Prosecutor v Mustafa Abu Bakar* [2009] MLJU 1299; [2009] 1 LNS 1237 Yeoh Wee Siam J — at the time of sentencing the accused for an offence of possession of dangerous drugs the court took into account the possible one third remission for good behaviour which had the effect of the accused being able to go home to Indonesia immediately or soon after the sentence was handed down;

(h) *Wong Keng Liang v Public Prosecutor* [2013] 4 MLJ 263 (CA) — the sentence of five years for the offence of exporting snakes without a permit was set aside and that the sentence of 17.5 months of imprisonment already served at the time of the hearing of the appeal was deemed sufficient with mention made that if the one third remission was taken into account it would translate the total period of imprisonment to be some 23 months;

(i) *Public Prosecutor v Razis bin Awang* [2020] MLJU 132 Azman Abdullah J — the accused was charged with two counts of support of terrorist group and related activities and in the course of imposing a sentence of seven years for the first count, the entitlement of one third remission was taken into account at the time of sentencing; and

(j) *James Jeffery & Ors v Public Prosecutor and another case* [2021] MLJU 1380 Celestina Stuel Galid J — in dismissing two appeals against two sentences of imprisonment of seven years and ten years which were to run concurrently, the High Court took into account that with the one third remission under sub-s 44(1) Prison Act 1995 the sentences for the offences of aiding or abetting or controlling prostitution under sub-s 37(1)(f) Penal Code and under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 if reduced, would amount to only a slap on the wrist.

[39] Without the benefit of the research aforesaid, this court had accepted the submissions of Mr Varpal Singh the learned counsel for the appellant that the remission provision in r 43 should not be taken into account even though Mr Varpal Singh had relied upon the authority of *Tuan Mat Lonik* in his written submissions but probably due to inadvertence had failed to highlight that the Court of Appeal had in fact taken into account deductions for good behaviour. This I had accepted on the premise that the Prison Rules on the one third remission would only be applicable *after* the sentence has been imposed

and with at least one calendar month of imprisonment having been served *and subject* to the prisoner having displayed good behaviour and industry in the course of serving his sentence of imprisonment. Indeed, in *Salleh bin Hj Ali Hassan v Public Prosecutor* [1987] 1 MLJ 522 Roberts CJ Bandar Seri Begawan, the court had to deal with the question whether it is proper for the director of prisons to apply the provisions for remission of one third sentence to that period spent by the applicant in police custody, ie in a police lock up from January 28 to February 26, 1986 and the court held that:

> the system of remission of sentences under the Prisons Act can apply only to periods of custody in a prison as defined in the Act itself, ie in a building declared to be a prison under s 3 of the Act and not to detention in a lock-up.

[40] The reasoning in *Salleh bin Hj Ali Hassan v Public Prosecutor* would be consonant with the logic that the prisoner must first be incarcerated in a prison and have earned his entitlement to a remission before he can be granted any remission. It follows that it should not be taken into account at the time of sentencing.

[41] It is to be observed that at the time the appeal was heard by the Court of Appeal in *Tuan Mat Lonik*, the appellant therein would have already served more than one calendar month of imprisonment and would be entitled to the one third remission if he had been of good behaviour and industry although whether such a remission is only available until the full sentence save for the remitted term has been served would be another question of fact to be determined based upon the circumstances of the case. Nevertheless, in the light of the past abovementioned decided cases including those emanating from the Court of Appeal, I may have erred in rejecting the one third remission point submitted by the prosecution and with all due respect, this court stands corrected by the Honorable Court of Appeal.

TOTALITY/CRUSHING EFFECT

[42] In *Bachik bin Abdul Rahman v Public Prosecutor* Augustine Paul JCA held that:

> A cumulative sentence may offend the totality principle if the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences involved, or if its effect is to impose on the offender 'a crushing sentence' ...
>
> There will be cases properly described as crushing the hope in the offender of reformation and a return to a desirable life but in which the offender has, by his criminal acts, forfeited any right to have his sentence reduced on that account (see *Crowley and Garner v R* [1991] 55 A Crim R 201). As O'Bryan J said in *Vaitos v R* [1981] 4 A Crim R 238 at p 301:

I have some difficulty appreciating the concept that a richly deserved sentence, not manifestly excessive, should be disturbed because the person upon whom the sentence is imposed may feel crushed by it. It is quite true that the applicant has to face a very long term of imprisonment before he will be released and because he is a comparatively young man, many of the best years of his life will be spent in custody. However, from the community point of view, his detention for a very substantial period is necessary to protect females from his criminal behaviour.

Young CJ said in that case that the question of whether the sentence imposed is crushing cannot be answered mathematically by reference to the offender's age and the length of sentence to be served but by the circumstances of the case.

The judgment of the learned sessions court judge illuminates the reasons that compelled him to order the sentence of imprisonment to be consecutive to the punishment imposed in respect of the previous offence. In this regard the learned sessions court judge said in his grounds of judgment:

Dari fakta yang dinyatakan tadi adalah amat jelas bahawa hukuman yang paling berat mestilah dikenakan terhadap OKT kerana perbuatan OKT yang tanpa belas kasihan telah sanggup merogol seorang kanak-kanak yang begitu muda berumur hanya 11 tahun.

Bukan itu saja, OKT yang berumur 28 tahun telah mengambil kesempatan dan juga melakukan keganasan fisikal terhadap mangsa yang jauh lebih lemah dari segi fisikal. Di dalam rayuannya OKT memohon supaya hukuman berjalan serentak dengan hukuman yang sedang dijalankan sekarang. Menurutnya, beliau telah insaf dan tidak akan mengulangi perbuatan ini dan juga merayu kerana sudah dikenakan hukuman sebatan yang agak banyak dalam kes terdahulu.

Walaupun pengakuan bersalah OKT telah dapat menjimatkan masa dan perbelanjaan mahkamah tetapi dalam kes-kes yang melibatkan mangsa yang dirogol berumur di bawah 16 tahun maka kepentingan awam melampaui kepentingan individu. Kepentingan awam memerlukan kesalahan begini dipandang berat dan mewajarkan supaya suatu hukuman yang maksima sebagai pengajaran dan teladan kepada masyarakat. Mahkamah bersetuju terhadap cadangan timbalan pendakwa raya yang mengesa supaya hukuman berat dijatuhkan kerana perbuatan sebegini amat berleluasa dan kesannya melibatkan trauma kepada mangsa yang sepatutnya mempunyai masa depan yang cerah.

Mahkamah juga mengambil maklum bahawa OKT sedang menjalani hukuman bagi kes rogol yang lain dimana mahkamah telah menjatuhkan hukuman 16 tahun penjara dan lapan kali sebatan rotan. Pada pandangan mahkamah nampaknya penglibatan OKT di dalam jenayah adalah lebih kepada kesalahan seksual yang kejam. OKT sekiranya tidak dibendung perbuatannya ini dari awal lagi maka kemungkinan besar beliau akan melakukan kesalahan yang sama terhadap mangsa-mangsa yang berlainan pada masa hadapan. Oleh itu amatlah berbahaya sekali kepada masyarakat umum sekiranya penjenayah seperti OKT ini diteruskan untuk bergaul di kalangan masyarakat umum kerana beliau mempunyai keupayaan dan potensi untuk melakukan kesalahan ini beberapa kali pada masa depan dengan akibat yang lebih teruk kepada

mangsa-mangsanya. Tidaklah keterlaluan sekiranya mahkamah menganggap OKT mempunyai ciri-ciri seorang perogol bersiri (serial rapist) yang menjadi masalah besar kepada polis dan ketenteraman awam pada masa kini.

In agreeing with the views expressed the learned judge said in pp 10–11 of his judgment:

Those comments were strong, but were not without reasonable basis. Rape is a heinous crime which must be severely punished. And in the case of both rapes committed by the appellant, they were most primordial. The appellant was just a savage. In both cases, he just snatched young and defenceless girls from the streets and raped them. The trial court was not wrong to say that the appellant was a real threat to the public, and to young girls in particular. The public must be protected. There was certainly good and justifiable reason to order a consecutive sentence. In any event, both offences were unrelated. A concurrent term of imprisonment would effectively result in the appellant not being imprisoned at all for the second offence. And that would not do any justice to the instant victim who would surely have to bear forever the ugly memory of rape, if not any of the undeserved stigma of rape. Each rape must be punished. This is certainly not a case to disturb the order of a consecutive sentence.

It must be remembered that both the offences were executed in the same manner and are of the same severity and are unrelated. *It cannot* be denied that the cumulative effect of both the sentences will have a crushing effect on the accused bearing in mind his age. But this effect must be balanced against the seriousness of the offences committed by him and the need to protect young females from him. The order made by the High Court in upholding the direction of the sessions court on the commencement of the jail term imposed in this case is therefore correct in law and we are unable to interfere.

[43] Similarly, for the reasons given by the LSJ, and for the reasons set out above, this court was of the view that given the serious offences serially committed by the appellant, the LSJ was correct on the facts and in the law and his judgments for the five cases do not call for interference by this court. As said by Hasan Lah JCA (who retired as FCJ) speaking for the Court of Appeal in *Pendakwa Raya v Prabu a/l Veeramuthu and others* [2010] MLJU 663; [2010] 8 CLJ 257:

[11] In an appeal against sentence an appellate court would not disturb the sentence imposed unless the trial court had erred in applying the correct principles of sentencing or had embarked on some unauthorized or extraneous exercise of discretion (see *Ganesan a/l Nachiappan & Ors v Public Prosecutor* [2000] 3 MLJ 244; [2000] 3 CLJ 302; *Public Prosecutor v Loo Choon Fatt* [1976] 2 MLJ 256; [1976] 1 LNS 102; *Bhandulananda Jayatilake v Public Prosecutor* [1982] 1 MLJ 83; [1981] 1 LNS 139 and *Yit Kean Hong v Public Prosecutor* [2005] 4 CLJ 592).

[44] In this case, it is clear that the appellant had carefully planned the timing and targets of his criminal acts. Bearing in mind, the fear and trauma the

appellant whilst armed had subjected all his victims in the early hours of the morning as well as the concern members of the public would have in frequenting such convenience stores, this court finds what was said in *Yusuf bin Busrah v Public Prosecutor* [2006] MLJU 163 by David Wong Dak Wah JC (later CJSS) to be compelling:

> ... if the total sentence of twenty seven years crushes this man, then so be it. The public interests demand that I show no sympathy to the appellant.

CONCLUSION

[45] In the upshot, the court dismissed the five respective appeals of the appellant and this judgment is to be treated as the judgment for all his five appeals.

Appeals dismissed.

Reported by K Selvaraju